

The Origin of Modern Political Thought (1937)

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The fact that we are seeking for³⁸ the origin of modern political thought needs some explanation and even justification.³⁹ We study the origin of modern political thought in order to arrive at an exact understanding of the essence of modern political thought. But precisely if it is our primary⁴⁰ intention to understand the essence of modern political thought,⁴¹ we must ask ourselves whether it would not be easier and at the same time more adequate to study modern political thought in its developed and mature form instead of in its embryonic form. For the essence of a thing shows itself only in its perfect⁴² state. True⁴³ as this principle is, its application in the present case is very doubtful. For it might perhaps be rash to assume that, say, contemporary thought is, as regards the essential questions, more developed than, say, seventeenth century thought. But however this may be, we have to go back to the origin of modern political thought in the first instance not in order to understand that thought *better* than we could do by studying contemporary thought but in order to understand it at all. For it would be a waste of time to ask⁴⁴ *what* a thing is before we know *whether* it is. Now, the very existence of something which might justly be termed⁴⁵ modern political thought has been called in⁴⁶ question. We mean, of course, by modern political thought not merely contemporary thought but the thought of the four centuries since the Reformation. For we are used to divide the history of political thought in particular, just as we do general history, into three parts: ancient, medieval, and modern. And by doing so, we assume that all modern political doctrines, in spite of all their divergences, have something in common which allows us to take them all together, to look on them as a unity in contradistinction to both medieval and ancient doctrines. Now, this very assumption which is accepted, I think, by most students⁴⁷ has been

challenged by one of the most learned men of our age. Dr. A. J. Carlyle has expressed the opinion that “at least from the lawyers of the second century to the theorists of the French Revolution, the history of political thought is continuous, changing in form, modified in content but still the same in its fundamental conceptions.”^a This statement of Dr. Carlyle⁴⁸ includes the assertion that seventeenth- and eighteenth-century political thought is *not* fundamentally different from the medieval. This, however, means that the as yet⁴⁹ current opinion according to which there is a modern period in the history of political thought, just as there is such a period in general history, is utterly wrong.

By making the statement quoted, Dr. Carlyle attacks the older opinion which says that there was a definite break between modern and medieval political thought. This opinion was based on the remembrance of what had happened since the Renaissance and the Reformation. It is perhaps not amiss to recall briefly the most important stages of this modern development with special regard to the question in hand. People who lived in 1500 had the impression that they were witnessing a revival of learning, that after centuries of barbarism, of useless, and even dangerous, scholasticism, the great inheritance of classical antiquity or of biblical antiquity or of both was being rediscovered. Those people did not merely believe that a break with the Middle Ages was effected—they saw that break with their own eyes. But people could not leave it at a break with the Middle Ages: they became aware that replacing the teaching of the Middle Ages by that of antiquity would not satisfy their needs. As long as they were under the spell if not of actual antiquity, at least of the idea of antiquity, they tried to replace veneration for actual, known antiquity by search for another antiquity which was older than Greek antiquity: scholars like Grotius, Joseph Scaliger, and Stevin were very much interested in the *siècle sage*, compared with which even Greek antiquity was a period of barbarism.^b Those men attempted⁵⁰ a break not only with medieval, but also with classical thought. In doing so,⁵¹ they were bringing forth the time when people dared to look to the future, to hope for a progress beyond all earlier achievements. Progress

^a [LS note] *A History of Mediaeval Political Thought in the West*, vol. 1, 2nd ed., 1927, p. 2. Dr. Carlyle seems to recognize three great periods of the history of political thought: 1) Plato and Aristotle, 2) from the Stoa to the French Revolution, 3) from Burke onwards. (See loc. cit., pp. 2 and 14.) Compare, however, the somewhat different observation on p. 197.

^b [LS note] See J. Klein, *Die griechische Logistik und die Entstehung der Algebra*, II, in: *Quellen und Studien zur Geschichte der Mathematik* usw. Vol. III, pp. 196–99.

desired led to progress achieved. By the middle of the seventeenth century, the belief was practically established that a progress beyond all previous epochs had been attained,⁵² a progress which was based on the fact that entirely new foundations had been laid. This belief gained in strength and firmness⁵³ during the following century, and it reached its climax before and during the French Revolution. In the heyday of that belief, the fundamental difference between modern political thought on the one hand, medieval and classical on the other, was recognized with enviable clarity. Condorcet, certainly one of the most important theorists of the French Revolution, held the following opinion about that difference:^a that⁵⁴ modern political philosophy is a true science, whereas the political philosophy not only of the Middle Ages and of the humanists but even of Plato and Aristotle was “a science of matters of fact, and so to say, empiric, rather than a veritable theory based on general principles”; that the true philosophical method—the exact analysis of our ideas and sentiments—has been found only by Locke; that as a consequence of their wrong method, all earlier thinkers, Althusius, Grotius, and Hobbes⁵⁵ included, were unable to reach a true, scientific knowledge of the rights of man; that Locke and Rousseau are the most important teachers of the rights of man; that they were the first to deduce the natural rights⁵⁶ of man from human nature and to perceive that the sole aim of political societies is the maintaining of those rights; that⁵⁷ the object of their political science, in contradistinction to all earlier political thought, is to found a society of equal and free men on the natural rights of man. Thomas Paine expresses the same opinion by saying, “the rights of man were but imperfectly understood at the (English) Revolution,”^b and by distinguishing between the new system of government and the old one, which latter is that of “such governments as have hitherto existed in the world.”^c This claim of the theorists of the French Revolution that they had attempted and achieved a break with tradition in its entirety was not consented by the leader of the historical movement which came to power as a reaction to that Revolution. As regards this point, there is perfect harmony⁵⁸ between Paine and Burke. Paine says: “What we formerly called Revolutions, were little more than a change of persons, or an alteration of local circumstances. They rose and fell like things of course, and had noth-

^a [LS note] *Esquisse d'un tableau historique des progrès de l'esprit humain*, ed. Prior, pp. 57f., 60f., 74, 110, 113, 130, 132, 149ff., 156, and 164.

^b [LS note] *Rights of Man*, Everyman's Library, p. 14.

^c [LS note] *Loc. cit.*, p. 163.

ing in their existence or their fate that could influence beyond the spot that produced them. But what we now see in the world, from the revolutions of America and France, are a renovation of the natural order of things, a system of principles as universal as truth and the existence of man, and combining moral with political happiness and national prosperity.”^a And Burke:⁵⁹ “There have been many internal revolutions in the government of countries, both as to persons and forms, in which the neighboring states have had little or no concern;⁶⁰ [. . .] the revolution, turning on matter of local grievance, or of local accommodation, did not extend beyond its territory.”⁶¹ The present revolution in France seems to me to be quite of another character and description; and to bear little resemblance or analogy to any of those which have been brought about in Europe, upon principles merely political. *It is a revolution of doctrine and theoretic dogma.*”^b Accordingly, Burke, no less than his opponents, stresses the fact that the pupils of Rousseau oppose a new morality (“that new invented virtue”) to “the old morality.”^c The fact that the leaders of the French Revolution were determined by a new morality, by a new conception of man, virtue, and State, by a conception basically different from both classical and medieval conceptions was thus not doubted of by competent⁶² observers while the struggle was going on. But as soon as this struggle lost its original vehemence, the object of the struggle lost its original lucidity too. Or, to put it more exactly, the opponents of the new morality were themselves so⁶³ much under the spell of that morality, their principles were so⁶⁴ much weakened by it, that they were not able to perceive with sufficient clarity the fundamental principle involved in the struggle. They opposed to the morality not so much the old morality as—“history.”⁶⁵ While the old morality, not less than the new one, had claimed to be based on reason, the most influential⁶⁶ opponents of the new morality appealed not to reason, not even to tradition as based on Divine Revelation, but to tradition pure and simple, to evolution. As a result, historical research gained during the nineteenth century an importance never heard of in earlier ages. This research was guided, at least as far⁶⁷ as the more conservative thinkers are concerned, by the idea of slow, unconscious evolution; and seeking such evolution, the historians found it more or less

^a [LS note] Loc. cit., p. 135.

^b [LS note] “Thoughts on French Affairs,” in *Reflections on the French Revolution & Other Essays*, Everyman’s Library, p. 287f.

^c [LS note] “Letter to a Member of the National Assembly,” loc. cit., p. 262 f.—Compare Condorcet’s judgment on the Aristotelian Ethics, loc. cit., p. 71ff.

everywhere. When the original struggle between the new morality and the old one, between the new political ideas and the old ones was almost completely forgotten, from the middle⁶⁸ of the nineteenth century until the Great War, it became even possible to deny that there ever had been⁶⁹ such a struggle at all; it became possible to believe and to state that "at least from the lawyers of the second century to the theorists of the French Revolution, the history of political thought is continuous, changing in form, modified in content, but still the same in its fundamental conceptions."

This statement is thus, indeed, the logical conclusion of the modern development; but it is based on people having forgotten⁷⁰ an experience undergone⁷¹ at all earlier stages of the modern development, the experience undergone⁷² by the modern mind as long as it had to struggle against the old values.⁷³ And is not an age-long actual experience of this kind, which in addition is most clearly evidenced, incomparably more trustworthy than the results of the most learned⁷⁴ studies made by detached historians?

However, historical evidence will always carry great weight. Now, as regards the historical evidence, there are a number of facts which speak, at first sight, in favor of Dr. Carlyle's thesis. I need not dwell on these facts. It is sufficient for our purpose to emphasize that by collecting those facts, Dr. Carlyle plays havoc with a series of current opinions about the specific difference between modern and medieval (or classical) political thought. But still, the essential thesis, as Condorcet has stated it, remains unshattered: the fundamental difference between modern and earlier political thought consists in this: that only modern political thought is based on the conception of the rights of man. This very⁷⁵ conception is the essence of modern political thought.

In order to see this, we must, however, not follow Condorcet too strictly.⁷⁶ For his historical assertions are, to some extent, misleading; they are paving the way to Dr. Carlyle's thesis. Condorcet believed that modern political philosophy was founded by Locke. Now, it is well-known how much Locke owed to the judicious Hooker; Hooker, in his turn, follows, as far as principles are concerned, Thomas Aquinas and the Fathers; the latter do nothing other than expound the views of the Bible on the one hand, of Greek and Roman philosophy and of the Roman lawyers on the other. Thus, the statement of so revolutionary a theorist⁷⁷ as Condorcet leads almost automatically to the judgment of so conservative an historian as Dr. Carlyle, who states that there is a continuity of the fundamental political conceptions from the Roman lawyers to the theorists of the French Revolution.

It can be shown that this development from Cicero to Condorcet is not so continuous as it seems to be; that there is a definite break of this continuity just between Hooker and Locke. The fact that this break is overlooked is due to⁷⁸ a specific fallacy created by the writings⁷⁹ of the later seventeenth and the eighteenth century in general, and of this period in England in particular.^a The thought of this period was already a reaction in the direction⁸⁰ of the classical, and even of the theological, tradition against the much more radical first half of the seventeenth century. I need only recall the names of the most original⁸¹ exponents of this movement: Leibniz and Swift.⁸² Leibniz who tried to reintroduce the teleological conception of Aristotle into the framework of the mechanistic and determinist modern science as founded by Descartes and Hobbes, and Swift, the author of the battle of the books.^b

And as regards the most important political philosophers of the period in question—Locke indeed⁸³ was a rather moderate thinker; and as regards⁸⁴ Rousseau, who cannot be said to have been moderate, he found his conception of the State not without going back to Sparta and republican Rome, in opposition to the specifically modern enlightened despotism of the seventeenth and eighteenth centuries.^c To put it more accurately, we may say: the reaction of the later seventeenth and of the eighteenth centuries took over as a matter of course the specifically modern fundamental conceptions, and, therefore, the thought of this period is definitely modern, but the thinkers concerned attempted to raise on the modern foundations a structure which was in the greatest possible harmony with traditional ideals,⁸⁵ as a result, their work can easily create the illusion that there is only a slight difference between their thought and that of the Middle Ages, that no break of continuity had happened in the meantime. What has been said of the eighteenth century holds *mutatis mutandis* of the nineteenth century: [I can here only refer back to what I have indicated⁸⁶ about the importance of historical research in the nineteenth century and of the meaning of that importance.] By these considerations we are led to the conclusion that the fundamental principles of modern political thought and, therefore, the essence of modern political thought shows itself in its purity only in the first

^a [LS note] Burke says in his Letter to a Member etc. (loc. cit., p. 267): "We continue, as in the last two ages, to read, more generally than I believe is now done on the Continent, the authors of sound antiquity."

^b [LS note] *The Battle of the Books* (1704).

^c [LS note] This character of [the] enlightened despotism is stressed by Condorcet, loc. cit., p. 148.

period of that thought, i.e., in the period beginning with Machiavelli and ending with Hobbes. This period we must study, not in order to understand modern political thought *better* than we could do by studying nineteenth or twentieth-century thought, but in order to understand modern political⁸⁷ thought at all.

None of the great political thinkers of the period in question—Machiavelli, Luther, Calvin, Bodin, Althusius, Bellarmine, Suarez, Grotius, Hobbes—could safely be neglected. But in order that⁸⁸ the multiplicity of persons and of points of view may not weaken our understanding⁸⁹ of the essential question,⁹⁰ I suggest that we study today⁹¹ exclusively only⁹² the most radical of the thinkers mentioned.⁹³ That thinker could rightly claim, more than anybody else, to be the founder of modern political thought in its peculiar character.⁹⁴ From this point of view,⁹⁵ certainly none of the theological thinkers can be called radical. For even those who did not, like Bellarmine and Suarez, simply continue the medieval tradition, but rejected that tradition, Luther and Calvin in particular, based their political teaching in the last instance on the revealed will of God, and this foundation is certainly not characteristic of modern political thought as such. On the other hand, Machiavelli, who was⁹⁶ less than any other of the thinkers mentioned bound by the philosophical and theological tradition, intends more to revive the spirit of the Roman republic than to give a new foundation to political thought. As regards Althusius, he plainly confesses in the preface to his *Politica*^a that he intends nothing else but to bring into a convenient order the political precepts differently handed down by different types of literature, and that the political precepts which he teaches are mainly taken from the traditional political works.^b Grotius states in the Prolegomena to his *De jure belli ac pacis* that nobody has up to him treated the law of nations exhaustively and in a clear order, and, besides, that nobody has succeeded in giving to jurisprudence in general the form of an art because nobody has as yet tried to separate those parts of jurisprudence which are

^a [LS note] *Politica methodice digesta, atque exemplis sacris et profanis illustrata* (1603).

^b [LS note] "Conatus sum . . . praecepta politica, quae varia a variis literis sunt tradita, in ordinem convenientem revocare . . . Tractarunt vero politicas quaestiones et aphorismos tum Philosophi, tum Jurisconsulti, tum Theologi . . . Eiusmodi ut supervacua in hac arte et aliena rejicienda et ad sedes proprias, quas dictante justitia in aliis scientiis habent, releganda esse putavi. Desideravi in hisce quoque nonnulla. Omiserunt enim quaedam necessaria . . . Praecepta vero politica et exempla quae trado, ex his iisdem politicis magistris, magnam partem sunt desumpta . . ." ed. Friedrich, p. 3f. [*Nonnulla* and *quaedam* have been underlined in pencil.]

based on natural law from those which are merely positive; but as regards the foundation of all doctrine of law, i.e., the natural law, Grotius holds fast to the Stoic tradition, and however⁹⁷ much he may criticize Aristotle, he accepts the traditional opinion that Aristotle is *princeps philosophorum*.^a We come to a different world when we read the statements about the tradition of political science in the preface to Bodin's *Les six livres de la République*. According to Bodin, there are scarcely three or four books dealing with the State; the political works of Plato and Aristotle are much too short to contain a sufficient teaching; in their time, political science was hidden in a dense⁹⁸ darkness; and as regards those who have written about the State since, they were even worse: they have profaned the sacred mysteries of political philosophy. Thus Bodin seems to attempt a really new foundation of political science. But how little this is the case one perceives if one remembers that Bodin too, not much⁹⁹ less than Machiavelli, Mariana, or Grotius, was a humanist, that historical testimonies carried almost as much weight with him as did the results of his own reflections.^b No, even Bodin did not succeed in laying a new foundation to political science. The man who did this was none¹⁰⁰ other than Thomas Hobbes.

In order to see this, we have only to compare Hobbes's general and introductory¹⁰¹ statements on the political tradition with those of Bodin. While Bodin complains that there are but few books dealing with the State, Hobbes complains that there are "infinite volumes" of political philosophy.^c While Bodin blames only traditional political philosophy in the usual sense of the word, Hobbes extends this judgment to political philosophy in its original sense, i.e., he rejects traditional moral philosophy too.^d While Bodin says that political philosophy in the times of Plato and Aristotle was hidden in dense¹⁰² darkness, Hobbes says that there was before him no political

^a [LS note] §§1, 6–8, 30, 36, and 42.

^b [LS note] "... entre un million de livres que nous voyons en toutes sciences, à peine qu'il s'en trouve trois ou quatre de la Repub. qui toutefois est la Princesse de toutes les sciences. Car Platon et Aristote ont tranché si court leurs discours Politiques, qu'ils ont plustost laissé en appetit que rassasié ceux qui les ont leuz: ioinct aussi que l'expérience depuis deux mil ans ou environ qu'ils ont escrit, nous a faict cognoistre au doigt et à l'oeil, que la science Politique estoit encores de ce temps là cachée en tenebres fort espesse . . . ceux qui depuis en ont escrit . . . ont profané les sacrez mysteres de la Philosophie Politicque . . ." —Speaking in the Dedication to his "République" of one of his most important propositions, Bodin says he had proved it "cum divinis et humanis legibus, tum etiam rationibus ad assentiendum necessariis."

^c [LS note] *Elements of Law*, pt. 1, ch. 13, sect. 3. See also ch. 1, sect. 1; and *De cive*, praef.

^d [LS note] "... nihil profuisse ad scientiam veritatis quae hactenus scripta sunt a Philosophis moralibus." *De cive*, Ep. ded.

science at all,^a that almost the whole political teaching of classical antiquity was utterly wrong and utterly dangerous: “In these western parts of the world, we are made to receive our opinions concerning the Institution, and Rights of Common-wealths, from Aristotle, Cicero, and other men, Greeks and Romanes . . . I think I may truly say, there was never anything so dearly bought, as these Western parts have bought the learning of the Greek and Latine tongues.”^b

Bodin’s and Hobbes’s general¹⁰³ statements on the tradition of political philosophy have, however, in spite of their differences, a further very important feature in common: in the statements quoted they do not even mention the medieval tradition. This fact does not mean that they had a better opinion of the medieval tradition than they have of the classical tradition. Quite the contrary, it means that they rejected medieval tradition even more than the teaching of classical antiquity. That is not to deny that the medieval thinkers were¹⁰⁴ in more than one way preparing the ground for modern political philosophy in general, and the doctrines of Bodin and Hobbes in particular, and that, consequently, from this point of view, medieval political philosophy is nearer to modern political philosophy than is classical political philosophy. But all those very important modifications, made in the Middle Ages, of classical political thought were inserted into the framework of classical thought; they did not lead to a systematic criticism of the classical framework, i.e., of the principles laid down by Plato, Aristotle, and the Stoics. We should never forget that even as radical a work as Marsilius’s *Defensor pacis* is, in its philosophical part, at least according to Marsilius’s intention, essentially based on Aristotle’s *Politics*. And if Marsilius, as some scholars contend, had come under¹⁰⁵ the influence of Averroes, we must further point out that Averroes was the most vigorous medieval exponent of classical thought who was known to Christian Europe. If there was criticism of classical political philosophy in the Middle Ages, the classical tradition was attacked in the name of another *tradition*—of biblical tradition. With reference to this most important fact, we may fairly say that there is at least as deep an affinity between modern political philosophy and classical political philosophy as there is between either of them and

^a [LS note] “. . . non (est) juris et legum naturalium major scientia hodie quam olim.” Ibid.—“Physica ergo res novitia est. Sed philosophia civilis multo adhuc magis; ut quae antiquior non sit . . . libro quem De Cive ipse scripsi.” *De corpore*, Ep. ded. In the same sense Hobbes says in his autobiography that *De cive* “novus omnis erat.” *Opera Latina*, ed. Molesworth, Vol. I, p. xc.

^b [LS note] *Leviathan*, ch. 21 (p. 113f., ed. Lindsay).

medieval political philosophy. For both modern and classical political philosophy made at least the attempt to discuss independently of any tradition the principles of politics. Arguments of authority did not carry any¹⁰⁶ great weight either with Plato and Aristotle, or with Hobbes and Rousseau; but they did carry great weight¹⁰⁷ with the medieval thinkers. From this point of view¹⁰⁸ we understand the meaning of the fact that Bodin and Hobbes do not mention in their general¹⁰⁹ statements the medieval tradition: they were fully aware that medieval political philosophy was, as regards the fundamental principles, based on classical political philosophy, and that, therefore, their real opponents were not Thomas Aquinas or Occam¹¹⁰ but Plato or Aristotle,¹¹¹ not the, however original and independent, followers but the first founders. For the discussion of the late sixteenth and the early seventeenth centuries turned on the fundamental principles themselves.

But which are the specifically modern principles opposed by the most radical modern political thinker to those of classical antiquity? Before we ask Hobbes for his answer to this question, we must make¹¹² two further preliminary observations. (1)¹¹³ The objections which Hobbes raises against the classical tradition, are, to some extent, based on the biblical tradition. Therefore, we have to disentangle Hobbes's own and truly revolutionary principle from¹¹⁴ its traditional presentation. But we ought not to underestimate that presentation which is, as a matter of fact, the historical presupposition of Hobbes's own teaching. (2) There are certainly some features of Hobbes's doctrine which cannot be said to characterize modern political thought in general. We cannot exclude from the outset the possibility that even those views which are at first sight specifically Hobbian are more congenial to the deepest tendencies of the modern mind than are the opposite views which are more commonly accepted by modern thinkers. But it would not be wise to take this possibility as our point of departure. To begin with, we shall take those specifically Hobbian views at their face value, i.e., as the individual teaching of an outsider; but, by going back from those views to their ultimate assumption, we shall find that that very assumption is at the same time the ultimate assumption of modern political philosophy as such.

[All objections which Hobbes raises against classical political philosophy, as founded by Socrates and carried on by Plato, Aristotle, Cicero, Seneca, "and thousand others," and thus to all political philosophy up to his, may be reduced to one fundamental objection. According to Hobbes, the whole tradition of political philosophy was based on the assumption

that private men^a can know by themselves what is good and evil. Indeed, Socrates and all his followers did make this assumption by raising the question as to what is good and evil. But this very assumption is according to Hobbes¹¹⁵ “the original error”; for the rules of good and evil are the *laws*, whereas the classical philosophers “make the Rules of Good, and Bad, by their own Liking, and Disliking,” by their *passions*. As the true rules are the laws, whatever the lawgiver, the *king*, commands is to be accepted as good and whatever he forbids is to be accepted as bad. The traditional teachers of politics, by trying to answer by their own reason the question as to what is good and bad, tried to set up a standard by which they, and anybody else, were enabled to measure the laws. Thus they became teachers of disobedience, promoters¹¹⁶ of anarchy, sophists who deceived men by the specious name of liberty.^b To the traditional political philosophy which was based on independent reflection of private men, which with necessary consequence led to a doctrine of rebellion, anarchy, *freedom*, Hobbes opposes a new political science which intends to establish by cogent reasons that man is obliged to unconditional *obedience*; in opposition to the classical tradition of democratic ideals, Hobbes teaches the preference of absolute monarchy.

Hobbes is thus in opposition to classical thought an exponent of a doctrine of absolute obedience to the laws. He was¹¹⁷ fully aware that by being this he was following another tradition. In the same texts on which we have mainly based our characterization of Hobbes’s primary tendency, he gives us sufficient hints as to that other tradition. He states that when private men claim to have an independent knowledge of good and evil, they wish

^a [LS note on a separate sheet] Compare in this connection the following statement by Calvin: “Sane valde otiosum esset, quis potissimus sit politiae in eo quo vivunt loco futurus status, a privatis hominibus disputari: quibus de constituenda re aliqua publica deliberare non licet.” *Instit.*, IV, cap. 20, §8. Hobbes held the same view: “And of the three sorts (of government), which is the best, is not to be disputed, where any one of them is already established; but the present ought alwaies to be preferred, maintained, and accounted best . . .” *Leviathan*, ch. 42 (p. 299). From this view we have to start in order to understand why Hobbes asserts the preference of monarchy, of which he was fully convinced, not as a demonstrated truth. See *De cive*, praef.

^b [LS note] *De cive*, praef. and cap. 12 art. 1–4; *Leviathan*, ch. 20 (p. 109), ch. 21 (p. 113) and 46 (pp. 366 and 372); *Opera Latina*, ed. Molesworth, Vol. V, p. 358f. — That Hobbes held the same view even before his philosophical period is shown by his introduction to his translation of Thucydides. There, he judged the behavior of the Athenian general towards the Melians to be unobjectionable, because the former executed a command given to them by their superiors (*English Works*, ed. Molesworth, Vol. VIII, p. xxix), and not because he accepted the doctrines, borrowed from the Sophists, with reference to which the Athenians justified their actions.

to be like kings (*cupiunt esse sicut reges*); and he adds that the oldest of all commandments of God was that man should not eat of the fruit of the¹¹⁸ tree of knowledge of good and evil, and that the oldest of the temptations of the devil was: You will be as¹¹⁹ gods, knowing good and evil. Thus Hobbes seems to base and, to some extent, he actually does base¹²⁰ his criticism of the classical doctrine of freedom and democracy on the biblical doctrine of obedience and monarchy.¹²¹

There are other texts which show the same tendency. Hobbes opposes to the Greek schools of philosophy the Jewish schools of law. And whereas he considers the former to have been completely useless, he strongly recommends the latter. In the Jewish schools of law, which were nothing other than congregations of the people, "the Law was every Sabbath day read, expounded, and disputed." In accordance with this model, there should in every commonwealth "times be determined, wherein (the people) may assemble together, and . . . hear those their Duties told them, and the Positive Lawes, such as generally concern them all, read and expounded, and be put in mind of the Authority that maketh them Lawes. To this end had the Jewes every seventh day, a Sabbath, in which the Law was read and expounded . . ."^a Speaking of his doctrine of the rights of the sovereign power, he says: "But supposing that these (principles) of mine are not such Principles of Reason; yet I am sure they are Principles from Authority of Scripture; as I shall make it appear when I shall come to speak of the Kingdome of God (administered by Moses) over the Jewes, his peculiar people by Covenant."^b Against the doctrine of "Aristotle, and other *Heathen* Philosophers," who "define Good, and Evill, by the Appetite of men," he makes the objection: "Not the Appetite of Private men, but the Law . . . is the measure. And yet is this Doctrine (sc. of those heathen philosophers) still practised; . . . and no man calleth Good or Evill, but that which is so in his own eyes."^c The expression "whatsoever seemeth good in his own eyes"^d is obviously of scriptural origin. We need only refer to Hobbes's own quotation: "After the death of Joshua, till the time of Saul, the time between is noted frequently in the Book of Judges,

^a [LS note] *Leviathan*, ch. 30 (p. 181) and 46 (pp. 364–66).

^b [LS note] *Leviathan*, ch. 30 (p. 179). It may be added that the interpretation, given by Hobbes as well as by other absolutist writers, of the biblical right of kings (1 Sam. 8, 11ff.)—see *Leviathan*, ch. 20 (p. 108) and *De cive*, cap. 11, art. 6—is based on the teaching of the Talmud (B. Sanhedrin 20b; cf. Maimonides, *Hilchoth melakhim* IV). The influence of Jewish law on the political discussions of the 16th and 17th centuries deserves a special study.

^c [LS note] *Leviathan*, ch. 46 (p. 372).

^d [LS note] *Ibid.* (p. 366).

that there was in those dayes no King in Israel; and sometimes with this addition, that every man did that which was right in his own eyes.”^a

[Of course, we must not take Hobbes’s quotations from the Scripture too seriously. Far from having been a sincere believer in the Scripture, he may rightly be said to have been the harshest critic of the authority of the Scripture, and even of its specific teaching, among the many violent opponents of the Bible in the seventeenth and eighteenth centuries.] I cannot produce now the proofs¹²² of¹²³ this assertion. On the present occasion, it will be sufficient to quote the following accounts by Hobbes’s friend and biographer Aubrey, which can be confirmed by an exact analysis of the *Leviathan*. Aubrey recounts: “When Mr. T. Hobbes was sick in France, the divines came to him, and tormented him (both Roman Catholic, Church of England, and Geneva). Sayd he to them ‘Let me alone, or els I will detect all your cheates from Aaron to yourselves.’ I thinke I have heard him speake something to this purpose.” “Mr. Edmund Waller sayd to me, when I desired him to write some verses in praise of him (Hobbes), that he was afayrd of the Churchmen . . . that, what was chiefly to be taken notice of in his elogie was that he, being but one, and a private person, pulled-downe all the churches, dispelled the mists of ignorance, and layd-open their priest-craft.”^b To these quotations I shall add only one point: Hobbes rewrites the ten commandments by replacing God by kings.^c The absolute obedience which Hobbes demands has then as its object not divine law, the will of God, but human law, the will of the sovereign power.

But in spite of his denial of the authority of the Scripture and in spite of his very atheism, it is not a mere matter of chance or prudence that Hobbes attacks the classical tradition in the name of the biblical tradition: as we shall see soon, his own teaching would not have been possible without the Greek tradition having been undermined by the biblical tradition.¹²⁴ At a first glance, Hobbes seems to base his political theory on the traditional doctrine of natural law. This impression is, however, proved wrong by Hobbes’s emphatic¹²⁵ statement that natural laws are not properly laws, that it is uncertain. The real foundation of his political philosophy is the doctrine of natural *right*. This is already proved by the fact that he deduces

^a [LS note] *Ibid.*, ch. 40 (p. 257); cf. *De cive*, cap. 11, art. 4.

^b [LS note] *Brief Lives*, ed. Clark, Oxford 1898, I. p. 357f. — “I have heard him (Hobbes) inveigh much against the crueltie of Moyses for putting so many thousands to the sword for bowing to (the golden calf).” *Ibid.*, p. 357.

^c [LS note] *Leviathan*, ch. 30 (pp. 180–82).

natural law from natural right, that he deals first with natural right and only in the second place with natural law.¹²⁶

The fact that Hobbes opposes the principle of absolute obedience to the laws to the classical principle of freedom might, at a first glance, create the impression that he is a more decided upholder of the rule of¹²⁷ law than was Aristotle. But it is just the conception of the rule of law which he most sharply attacks: “. . . this is another Errour of Aristotles Politiques, that in a wel ordered Common-wealth, not Men should govern, but the Laws. What man, that has his naturall Senses, though he can neither write nor read, does not find himself governed by them he fears, and beleeves can kill or hurt him when he obeyeth not? or that beleeves the Law can hurt him; that is, Words, and Paper, without the Hands, and Swords of men?”^a Not the law is sovereign, but the will of men, of the men in power; and the law, far from being the sovereign, is itself completely subject to the will of the governing men.^b Thus, Hobbes’s stressing absolute obedience to the laws is misleading. His real opinion finds a more adequate expression in the fact that, while his first presentation of his political philosophy was entitled *The Elements of Law*, his final presentation is called *Leviathan, or the Matter, Form and Power of a Common-wealth*; i.e., in the fact that the more Hobbes understood his own¹²⁸ intention, the more he put the idea of law into the background in favor of the idea of the sovereign will. Accordingly, when Hobbes opposes to the classical doctrine of freedom, which was, as he himself knew very well, really a doctrine of the rule of law, his own doctrine of absolute¹²⁹ obedience to the laws, the conceptions of “law” and “obedience” must have undergone a fundamental change.

Hobbes replaces God by the Kings, the will of God by the will of the Kings or any other sovereign power. The will of the sovereign power, i.e., the civil laws, are, as he says, the only authentic rules of good and evil, of right and wrong.^c And, therefore, “where there is no Common-wealth, there nothing is Unjust.”^d But this statement is only an inexact¹³⁰ expression of what he really means. For he knows too well that when the sovereign power requires absolute obedience, the question arises: on which authority does the sovereign power base its claim? And this question cannot be answered by another command of the sovereign power. A law forbidding questioning

^a [LS note] *Leviathan*, ch. 46 (p. 373 f.). Cf. also ch. 18 (p. 91f.) and *De cive*, cap. 12, art. 4.

^b [LS note] *Leviathan*, ch. 26 (p. 141) and *De cive*, praef. and cap. 6, art. 14.

^c [LS note] *Elements of Law*, Pt. II, ch. 10, sect. 8; *De cive*, praef. and cap. 12, art. 1.

^d [LS note] *Leviathan*, ch. 15 (p. 74).

the authority of the sovereign, i.e., a law forbidding rebellion, would be ridiculous; for if the subjects are not obliged beforehand to obey, i.e., not to resist and to rebel, any law would be invalid; and, on the other hand, a law which obliges the subjects to something to which they are obliged already is superfluous. Thus the obligation to civil obedience, the obligation to which all civil laws owe their validity, is prior to any civil law.^a As a result, obedience to the civil laws, to the will of the sovereign,¹³¹ is based not on civil law, but on natural law.

But why then does Hobbes say that there is no distinction between good and bad, between right and wrong, before there are civil laws? As I have already indicated, this is an inexact expression. Hobbes himself has summed up his political teaching by saying that he derived *virtues* and vices from *natural* law, and goodness and badness of the *actions* from the *civil* laws.^b What he really means and often enough says is then that before there are civil laws, there is no distinction between good and evil *actions*, right and wrong *actions*; the distinction between right and wrong *intentions*, between virtues and vices, is prior to all civil law, depends only on natural law. Generally speaking,¹³² the civil laws are concerned only with the actions, while the natural law is concerned only with the intentions.^c The concrete meaning of the distinction between natural law and civil law is that, before there is a commonwealth,¹³³ i.e., in the state of nature, nobody is obliged to peaceful actions; but even in the state of nature, everyone is obliged, by the law of nature, to peaceful intentions.^d Now, this obligation, derived from natural law, to peaceful intentions is the very root of the obligation to absolute obedience to the sovereign, since the sovereign power is established to no other purpose than¹³⁴ to secure peace, and since the sovereign must dispose, according to his own discretion, of the wills and faculties of his subjects in order to maintain peace at home and abroad. As thus the final consequence of the law of nature is the obligation to absolute obedience to the sovereign, there can never be a conflict between the natural law and the civil law.^e Thus Hobbes succeeds in avoiding the difficulty¹³⁵ that the idea

^a [LS note] *De cive*, cap. 14, art. 21; cf. *Leviathan*, ch. 28 (p. 169).

^b [LS note] "At ille (sc. Hobbes) mores hominum ab humana natura, virtutes et vitia a lege naturali, et bonitatem malitiamque actionum a legibus civitatum, derivavit." *Opera Latina*, Vol. I, p. xix.

^c [LS note] *Elements*, Pt. II, ch. 6, sect. 3; *Leviathan*, ch. 27 (p. 154f.) and 46 (p. 374). Compare *Leviathan*, Introduction.

^d [LS note] *Elements*, Pt. I, ch. 17, sect. 10–14; *De cive*, cap. 3, art. 27; *Leviathan*, ch. 15 (p. 82).

^e [LS note] *De cive*, cap. 14, art. 10; *Leviathan*, ch. 26 (p. 141f.).

of natural law might endanger, as in principle it always had done, absolute obedience to the earthly governors.¹³⁶ But, on the other hand, he fully realized that rejecting natural law¹³⁷ would have meant rejecting the foundation of all political philosophy, and even denying the very root of all civil law.

Our result so far is that the basis of Hobbes's political teaching is the traditional doctrine of natural law. This impression¹³⁸ is, however, contradicted by the fact that Hobbes does all he can in order to depreciate natural law. Almost in the same breath in which he says that the laws of nature *oblige* always and everywhere man's conscience, that "a Law of Nature (*Lex Naturalis*) is a Precept, or generall Rule, found out by reason, by which a man is *forbidden* to do etc.,"^a he denies the so-called laws of nature the dignity of laws: "the Lawes of Nature . . . are not properly Lawes."^b Natural law would be a law if it had been imposed by a lawgiver: "the Lawes of Nature . . . are not properly Lawes . . . When a Commonwealth is once settled, then are they actually Lawes, and not before; as being the commands of the Commonwealth; and therefore also Civill Lawes: For it is the Sovereign Power that obliges men to obey them."^c Independently of *civil* legislation,¹³⁹ natural¹⁴⁰ law would be a law only as imposed by God. But this possibility is tacitly denied by Hobbes. It is true, in the earliest presentation of his political philosophy, he said: "And forasmuch as law (to speak properly) is a command, and these dictates (sc. the laws of nature), as they proceed from nature, are not commands; they are not therefore called laws in respect of nature, but in respect of the author of nature, God Almighty." But in the final presentation, he states: "These dictates of Reason, men use to call by the name of the Lawes; but improperly; for they are but Conclusions, or Theoremes . . . But yet if we consider the same Theoremes, as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes."^d The latter statement implies the denial that divine legislation can be known by natural reason; and as Hobbes denies revelation any authority if it is not made authoritative by the civil sovereign, his final statement¹⁴¹ amounts to denying divine revelation in any sense. Thus, according to him, natural law is in no sense a *law*. For a law is essentially a command, i.e., a precept which man has to obey merely because it is commanded; the reason for which man

^a [LS note] *De cive*, cap. 3, art. 27; *Leviathan*, ch. 15 (p. 82) and 14 (p. 66).

^b [LS note] *Leviathan*, ch. 26 (p. 141); cf. ch. 15 (p. 83) and *De cive*, cap. 3, art. 33.

^c [LS note] *Leviathan*, ch. 26 (p. 141).

^d [LS note] *Elements*, Pt. I, ch. 17, sect. 12; *De cive*, cap. 3, art. 33; *Leviathan*, ch. 15 *in fine*.

has to obey a law is the *will* of authority. Thus law is fundamentally different from all precepts the reason of obedience to which is drawn from one's own benefit, from the matter itself which is commanded.^a Consequently, "the knowledge of all Law, dependeth on the knowledge of the Sovereign Power," i.e., of the lawgiver.^{b142} From this conception of law, it necessarily follows that the so-called natural law is no law at all.¹⁴³ For natural law is a precept, not imposed by the will of an authority, but "found out by reason"; the obligation to obey it is founded not on the will of a superior, but on insight into the matter, into what is good, what is good to the obeying man: the natural law "are but Conclusions, or Theoremes, concerning what conduceth to the conservation and defence of *themselves*."^c

In order to understand Hobbes's view aright, we must remember that his whole doctrine is expressly¹⁴⁴ directed against the whole tradition and particularly against¹⁴⁵ the classical doctrine. Accordingly, we have to glance back to the classical conception of law in order to grasp the assumptions underlying Hobbes's thesis that natural law is no law. In the conception of classical philosophy,¹⁴⁶ the idea that law is essentially a command given by a superior is, to say the least, not in the foreground. The conception guiding¹⁴⁷ Plato as well as Aristotle and Cicero may be summed up in the formula: Law is an order, a distribution and assignation of something; it owes its validity to its having emanated from wisdom and understanding; law is right order, found out by reason, and it *is* law not because it is imposed on man by the will of authority, and not in the first instance because it is consented to by the citizens, but because it is founded on perception of what is good.^d Law is right order, a rule and measure, not imposed on man, but understood by man. This conception had been maintained, when Hobbes was a child, by Hooker in his *Laws of Ecclesiastical Polity*. Hooker says that there are people who "apply the name of Law unto that only rule of working which superior authority imposeth; whereas we somewhat more enlarging the sense thereof term any kind of rule or canon, whereby actions are framed, a law." "A law therefore generally taken, is a directive rule unto goodness of operation." "That which doth assign unto each thing the kind, that which

^a [LS note] *Elements*, Pt. II, ch. 10, sect. 4; *De cive*, cap. 14, art. 1; *Leviathan*, ch. 25 (p. 136).

^b [LS note] *Leviathan*, ch. 31 (p. 189) and 26 (p. 140f.).

^c [LS note] *Leviathan*, ch. 15 *in fine*.

^d [LS note] Plato, *Laws* IV (714 a) and XII (957 c); *Politicus* 296f., Aristotle, *Eth. Nic.* X 10 (1180a21–23) and *Politics* VII 4.—Cicero, *Legg.* I, 6, 18–19.

doth moderate the force and power, that which doth appoint the form and measure, of working, the same we term a Law.”^a It is the consequence of his adopting this classical conception of law that Hooker can acknowledge, without any qualification, natural law as a law in the proper sense of the word: “the natural measure whereby to judge our doings, is the sentence of Reason, determining and setting down what is good to be done. Which sentence is either *mandatory*, showing what *must* be done; or else permissive . . . or thirdly admonitory . . .”^b

When Hobbes attacks the classical view according to which law is essentially dependent on understanding, and the consequence of this view that natural law is a real law, he follows a medieval tradition.^c The theological correspondence to the classical view is the thesis that the ultimate reason of natural law is divine *understanding*. To that thesis, a number of medieval thinkers had opposed the opinion that the ultimate reason of natural law is divine *will*. According to this opinion, natural law is for this reason, and for this reason only, a law because it is commanded by God who can change it or repeal it just as he likes; consequently, no action whatsoever is intrinsically good or bad, but merely as far as it is commanded or forbidden by God. There were other thinkers who could not accept this consequence of the latter opinion because they realized that the actions commanded or forbidden by natural law are intrinsically good or bad; they tried to avoid the danger¹⁴⁸ that the intrinsic validity of the principles¹⁴⁹ of morality would be denied in the name of divine omnipotence; for this purpose, they made natural law absolutely independent of the will of God; but as they had accepted the assumption that law is essentially a command, they could not maintain the classical view that natural law is a real law; they came to the conclusion that natural law is no law in the proper sense of the word, that it does not command, but merely indicate and show what has to be done or omitted. Their teaching is taken over by Hobbes when he says that the natural law, in spite of its intrinsic validity (its eternity and immutability), is not properly a law.^d

^a [LS note] Book I, ch. 2, §1; ch. 3, §1; ch. 8, §4.

^b [LS note] Book I, ch. 8, §8.

^c [LS note] The following exposition is based on Suarez, *Tr. de legibus ac de Deo legislatore*, lib. II, c. 6, and lib. I, c. 5.

^d [LS note] Suarez, loc. cit., lib. II, c. 6, §1: “. . . ratio dubitandi . . . Lex . . . propria et praeceptiva non est sine voluntate alicuius praecipientis . . . ; sed lex naturalis non nititur in voluntate

But Hobbes goes much beyond saying that natural law is merely indicative, not perceptive; he even says that it is *uncertain*; the laws of nature “are but theorems, tending to peace, and those uncertain, as being but conclusions of particular men, and therefore not properly laws.”^a It is true, he affirms the contrary often enough: it will be sufficient to note that he accepts the traditional doctrine that the natural laws are immutable and eternal,^b and consequently certain. This astonishing contradiction compels us to go back from the theory of natural law¹⁵⁰ to the foundation of Hobbes’s political philosophy. This foundation is *not* the doctrine of natural law. For, according to Hobbes, natural law is merely a *means* for an end.^c Consequently, the end for which natural law is necessary cannot be established by natural law; there must be another principle, prior to natural law, which sanctions the end for which natural law is the means. That principle is natural *right*. By studying Hobbes’s doctrine of natural right, we shall be enabled to solve the contradiction mentioned; for then we shall see that the natural law, as Hobbes understands it, is in one sense certain, and in another sense uncertain.

Right is distinguished from law by the fact that a right is a liberty to do or forbear, whereas law is a binding obligation. Accordingly, natural right is the liberty which man has by nature to defend his life and limb; and natural law is the obligation, under which man is by nature, to seek peace. This obligation is based on the fact that peace is the universal condition for securing conservation of life and limb; thus, the natural obligation, natural

alicuius praecipientis; ergo non est propria lex.” §2: “In hac re prima sententia est, legem naturalem non esse legem praecipientem proprie, quia non est signum voluntatis alicuius superioris, sed esse legem indicantem, quid agendum vel cavendum sit, quid natura sua intrinsece bonum ac necessarium, vel intrinsece malum sit. Atque ita multi distinguunt duplicem legem: unam indicantem, aliam praecipientem, et legem naturalem dicunt esse legem prior modo, non posteriori . . . Atque hi auctores consequenter videntur esse concessuri, legem naturalem non esse a Deo ut a legislatore, quia non pendet ex voluntate Dei, et ita ex vi illius non se gerit Deus ut superior praecipiens, aut prohibens; immo ait Gregorius, quem caeteri secuti sunt, licet Deus non esset, vel non uteretur ratione, vel non recte de rebus iudicaret, si in homine esset idem dictamen rectae rationis dictantis, v. g. malum esse mentiri, illud habiturum eandem rationem legis, quam nunc habet, quia esset lex ostensiva malitiae, quae in obiecto ab intrinseco existit.”—Hobbes’s earlier view, as expressed in *Elements*, Pt. I, ch. 17, sect. 12, is the same as Suarez’s. Cf. *ibid.*, §§11 and 16.

^a [LS note] *English Works*, Vol. IV, p. 285.

^b [LS note] *De cive*, cap. 3, art. 29 and *Leviathan*, ch. 15 (p. 82).

^c [LS note] *De cive*, cap. 3, art. 29; cf. cap. 1, art. 1.

law, is nothing other than the necessary means for safeguarding natural liberty, natural right. More exactly, natural law has no other source but natural right, from which all the dignity of natural law is completely derived.¹⁵¹ [But how can a liberty create an obligation? There is only [one answer] possible: if the liberty on which the obligation rests proceeds itself from an obligation, a binding force, a restraint. Now, the natural right of man is his liberty to defend his life and limb; this liberty is derived from the fact that everybody flees¹⁵² with inescapable necessity from the first and greatest and supreme evil: death.^a Thus, the natural right, the natural liberty is not a thing of which man could dispose according to his judgment or pleasure; his natural liberty or right is rather imposed on him: man is *compelled* to his natural right.^b The power which “compells,” restrains, binds¹⁵³ man to his right, is “Nature,” or, less vaguely, “that terrible enemy of nature, death.”^c By the fear of death, man’s natural appetite, which in itself is infinite, is limited, restrained to reasonable care for self-preservation. Out of this care, out of the reflection on the best and necessary means for self-preservation arises the perception of natural law. This perception, a work of reason, is on the one hand certain; for there is no possible doubt that only peace is the best and necessary means for preserving life and limb. However,¹⁵⁴ the perception of natural law is on the other hand uncertain; for it is a work of reason only; and not reason, but only the passion of fear of death has an absolutely binding, restraining power. But natural right, since it immediately proceeds from perceiving and feeling and fearing death, is absolutely certain.¹⁵⁵

Natural right is the source of natural law. The obligation which is imposed by natural law—and it *is* an obligation, if only for the conscience—is derived from the binding, restraining force of death which justifies natural right.¹⁵⁶ There is another feature of the natural law, as Hobbes sees it, which, too, has its origin in a corresponding feature of natural right. Natural law is primarily prohibitive: “A Law of Nature . . . is a Precept, or generall Rule, found out by Reason, by which a man is *forbidden* to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit that, by which he thinketh it may be best preserved.”^d In this prohib-

^a [LS note] Ibid., cap. 1, art. 7.

^b [LS note] As a consequence, the virtues are passions, though passions of a particular kind. Compare *Elements*, Pt. I, ch. 16, sect. 4, with ch. 17, sect. 14.

^c [LS note] Compare *Leviathan*, ch. 27 (p. 160) and *Elements*, Pt. I, ch. 14, sect. 6.

^d [LS note] *Leviathan*, ch. 14 (p. 66).

itive character of natural law, the fact is reflected that the ultimate reason of natural right, and consequently of all right, law, and morality, is the fear of death, i.e., of the supreme evil, and not a desire for a supreme good: according to Hobbes, there is no supreme good, while there is a supreme evil.^a

Only now are we in a position to understand the actual meaning of Hobbes's opposing the idea of obedience to the classical idea of freedom. Actually, he opposes to the seeing, understanding obedience to right reason, (the) blind obedience to the will of the sovereign; and that blind obedience is derived from the fear of death which—in spite of the fact that it *makes* man prudent—is itself not prudent, not seeing, but blind.¹⁵⁷ Obedience, as Hobbes understands it, and fear of death are related to each other by the fact that they both are blind. We may take it that the fear of death which is the beginning of all prudence is only the “secularized” form of the fear of God which is the beginning of all wisdom. Indeed, Hobbes coordinates the fear of “Spirits Invisible” or, rather, “the feare of that Invisible Power, which they every one Worship as God” to the natural state, just as he coordinates the fear of the sovereign power to the civil state.^b This, however, means, as the natural state is essentially irrational, while the civil state is essentially rational,^c and as men's subjection to a sovereign power arises out of natural fear, of fear of violent death,^d that, according to Hobbes, fear of God is the irrational, prerational equivalent to fear of death, which, in spite of its being prerational, has nevertheless the merit that it is the only means to make man rational.

The consequence then is:¹⁵⁸ the real principle of Hobbes's political philosophy is the absolutely certain natural right as distinguished from natural law, which is at least¹⁵⁹ in one sense uncertain.¹⁶⁰ Already the distinction between Right and Law is highly significant. It was definitely¹⁶¹ no¹⁶² usual distinction. Hobbes himself says: “though they that speak of his subject, use to confound Jus, and Lex, Right and Law; yet they ought to be distinguished; because Right, consisteth in liberty to do, or to forbear; Whereas

^a [LS note] With this is connected the fact that Hobbes judges on the preference of the several sorts of government with regard not to their virtues but to their defects. See the chapter headings of *Elements*, Pt. II, ch. 5 (“The inconveniences of several sorts of government compared”) and *De cive*, cap. 10 (“Specierum trium civitatis, quoad incommoda singularum, comparatio”).

^b [LS note] *Leviathan*, ch. 14 (p. 73).

^c [LS note] *De cive*, cap. 10, art. 1.

^d [LS note] *De cive*, cap. 1, art. 2 and Ep. ded.

Law, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty; which in one and the same matter are inconsistent.” And as he says:¹⁶³ “I find the words *Lex Civilis*, and *Jus Civile*, that is to say, Law and Right Civil, promiscuously used for the same thing, even in the most learned Authors; which neverthesse ought not to be so . . .”^a The distinction, made by Hobbes, is, to some extent, identical with the distinction, made in German jurisprudence, between right in the subjective sense (“Right”) and right in the objective sense (“Law”). What Hobbes understands by “Law” needs no further¹⁶⁴ explanation; what he means by “Right” may be called, less ambiguously, a justified claim, a right which I *have* in contradistinction to a right by which I am *bound*. Accordingly, “natural right,” as Hobbes understands it, is the justified claim par excellence, the right which I have under all circumstances.¹⁶⁵

As far as I can see, the distinction between Right and Law, so that Right means nothing other than justified claim, and Law nothing other than obligation or command, has been introduced by Hobbes. I shall not insist on the fact that the two words were generally¹⁶⁶ used promiscuously, as Hobbes rightly observed. It is more useful to note that the distinction, suggested by Hobbes, was led up to or suggested¹⁶⁷ by more or less similar distinctions, made by earlier writers. We find a distinction between Right and Law in Bodin, who borrowed it from a tradition which can be traced back at least to Isidorus of Sevilla; according to that distinction, Right is equity, Law is written law;^b that is to say, that distinction has nothing to do with Hobbes’s distinction; for what Bodin and his forerunners call “Right” is called by Hobbes “Natural Law” (and what the former call “Law” is called by Hobbes “Civil Law”).^c We find a distinction between different meanings

^a [LS note] *Leviathan*, ch. 14 (p. 66f.) and 26 (p. 153). Compare *Elements*, Pt. II, ch. 10, sect. 5, and *De cive*, cap. 2, art. 10.

^b [LS note] Bodin, *République*, I, ch. 8 (ed. Paris, 1583, p. 155: “. . . il y a bien difference entre le droit et la loy: l’un n’emporte rien que l’équité, la loi emporte commandement: car la loy n’est autre chose que le commandement du souverain, usant de sa puissance.”—Suarez, *Tr. de legibus*, lib. I, cap. 2 §5: “Addit vero Isidorus . . . ius et legem comparari ut genus et speciem; nam ius vult esse genus, legem vero speciem. Et rationem reddere videtur, quia ius legibus et moribus constat. Lex autem est constitutio scripta . . . Et videtur sequi d. Thomas . . . dicens rationem aequi et iusti, si in scriptum redigatur, esse legem . . .”

^c [LS note] Hobbes says of equity “that principall Law of Nature called Equity”; see *Leviathan*, ch. 26 (p. 150); cf. ch. 15 (p. 80), *De cive*, cap. 3, art. 15 and many other passages. This means that equity is an obligation and, consequently, neither the basis nor the essence of natural right, as Hobbes understands it.—It should, however, be mentioned that Hobbes occasionally characterizes the content of natural right as *aequum* (*De cive*, cap. 3, art. 27 annot.).

of “Right” in Driedo,^a Suarez,^b and Grotius;^c on the way from Driedo via Suarez to Grotius, that meaning of “Right,” which is, according to Hobbes, its only meaning, comes more and more into the foreground;^d but all those writers insist on the use of “Right” in the sense of law also, and, besides, they introduce what Hobbes understands as the distinction between “Right” and “Law” as a distinction between two different meanings of “Right,” to say nothing of the fact that they do not assert that the two meanings of “Right” which they distinguish are contrary.^e We find another distinction, closely related to that already mentioned, between “Right” and “Law” in Sir John Fortescue’s *De natura legis naturae*;^f his statements come indeed very near to those of Hobbes, perhaps nearer than those of anybody else; he obviously thinks, when speaking of law, of obligation, and when speaking of right, of justified claim; but he fully agrees with the traditional view^g that right as derived from justice and as being “all that is equitable and good”¹⁶⁸ is the genus and law the species; thus, he does not reach Hobbes’s distinction according to which Right and Law are contraries.

^a [LS note] Ioannes Driedo (ca. 1480–1535), *De libertate christiana*, Lovanii 1548, lib. I, cap. 10.

^b [LS note] *Tr. de legibus*, lib. I, cap. 2. Compare also lib. II, cap. 17, §1.

^c [LS note] *De jure belli ac pacis*, lib. I, cap. 1, §§3–9.

^d [LS note] While for Driedo the first meaning of “Right” is law, for Suarez its first meaning is the equity which is owed to everybody and, consequently, the right which I have. Grotius goes farther than Suarez. While Suarez treated first (lib. I, cap. 1) the different meanings of *lex*, and only in the subsequent chapter the different meanings of *ius*, Grotius speaks exclusively of the different meanings of *ius*; and, in addition, he names as the first meaning of *ius*: that which is allowed (I am following the interpretation given by Gronovius in his notes to *De jure belli*, lib. I, cap. 1, §3). Here, we must remember that Hobbes, too, characterizes the content of the natural right as something which “ought to be allowed” to man; see *Leviathan*, ch. 13 (p. 64). Compare also the negative characters of natural right as explained in *De cive*, cap. 1, art. 7 and *Elements*, Pt. I, ch. 14, sect. 6, with Grotius’s statement concerning the first meaning of *ius*: “jus hic nihil aliud quam quod justum est significat, idque negante magis sensu quam ajente, ut jus sit quod injustum non est.”

^e [LS note] Grotius, when speaking (loc. cit., §5) of the right which I have, says he will call that right afterwards “dus proprie aut stricte dictum,” and thus he seems to accept that meaning of *ius* which is, according to Hobbes, its only meaning, at least its proper meaning. This impression is proved wrong by parallel passages (Prolegg. §§8–10 and 41; lib. I, cap. 1, §9; lib. II, cap. 17, §2; lib. III, cap. 10, §1) which show that Grotius speaks of “jus proprie aut stricte dictum” merely in order to distinguish all actions which are related to justice in particular from the actions which are related to virtue in general. Thus, “jus proprie aut stricte dictum,” as Grotius understands it, means both Right and Law, as Hobbes understands them.

^f [LS note] Pt. I, cap. 30: *Differentia inter ius et legem*.

^g [LS note] See p. 184, n. b, above.

But these¹⁶⁹ [word illegible] earlier writers did not distinguish so clearly between Right and Law as did Hobbes. And they did not¹⁷⁰ solely because they had no interest in such a distinction. For why does Hobbes make that distinction? Because he could not acknowledge a transcendent, superhuman order or a superhuman will as the ultimate reason of all law, right, and¹⁷¹ morality; and because, on the other hand, he was too sensible not¹⁷² to see that there is a fundamental difference between human appetite as such and between right or good human appetite. Now, he conceived human appetite as such, natural appetite of man, as a striving after ever greater power, or more exactly, as a striving after ever increasing triumph over all other men. Thus, man's natural appetite is nothing other than "the offensiveness of man's nature one to another."^a That is to say, man's natural appetite is a claim which every man naturally raises against every other man; it is the absolute claim, the maximum claim. Now, this claim cannot be answered for¹⁷³ in the face of any other man. For "if we consider how little odds there is of strength or knowledge between men of mature age, and with how great facility he that is the weaker in strength or in wit, or in both, may utterly destroy the power of the stronger, since there needeth but little force to the taking away of a man's life; we may conclude that men considered in mere nature, ought to admit amongst themselves equality; and that he that claimeth no more, may be esteemed moderate."^b The actual war of every one against every one, which is the necessary consequence of every man's raising the maximum claim, leads to the result that every man is compelled to acknowledge the equality of every other, i.e., to claim no more than the right of defending his life and limbs. Thus, out of the experience of the natural state of war, the minimum claim, the absolutely justified claim, arises; and this claim is absolutely justified because it can be answered for¹⁷⁴ in the face of all other men under all circumstances. In this way Hobbes succeeds in taking into account the fundamental difference between human appetite as such and right human appetite, without having recourse to a transcendent, superhuman order or will;¹⁷⁵ he succeeds in what we may call an "immanent" foundation of morality. But he succeeds in this merely because he was able to discover natural right (namely: the minimum claim) as a medium between transcendent law and human appetite.¹⁷⁶ In order to maintain the fundamental difference between human appetite as such and right appetite,

^a [LS note] *Elements*, Pt. I, ch. 14, sect. 11.

^b [LS note] *Ibid.*, sect. 2.

in spite of his denying a transcendent order, he must assert the primacy of Right before Law. And for this very reason, he had, to begin with, to distinguish between Right and Law as clearly as at least no well-known and influential thinker before him had ever attempted to do.¹⁷⁷

That Hobbes asserts the primacy of Right before Law is shown not only by the fact that he treats natural right before treating natural law, but also by his explanation of the meaning of “justice.” “Justice” signifies “the same thing with no injury”; injury is “the breach or violation of covenant, . . . consisting in some action or omission, which is therefore called Unjust. For it is action or omission, without *jus*, or right; which was transferred or relinquished before.”^a That is to say, “justice” is derived from “*jus*,” Right, understood as justified claim. What this means becomes fully apparent if one compares with Hobbes’s derivation of “justice” from *ius* the two traditional derivations of *ius* from *iubere* or *iustitia*;^b for according to the latter explanations,¹⁷⁸ the right which I have is derived from a preexisting law or order, while, according to Hobbes’s explanation,¹⁷⁹ all law and virtue is derived from¹⁸⁰ the right which I have.

Thus,¹⁸¹ the primacy of Right before Law was never asserted before Hobbes, either by the idealistic and¹⁸² theological or by the materialistic tradition.^c As regards the former: as long as God or an eternal order is believed in, the primacy of law before any human claim, and also before any human right, is a matter of course. As regards the materialistic tradition,¹⁸³ we can limit ourselves to the Epicurean since it was the only tradition of this kind which played an important role in the sixteenth and seventeenth centuries. But it must be stressed that what I am going to say with regard to Epicurus holds true, *mutatis mutandis*, of¹⁸⁴ all other materialism before Hobbes.^d Hobbes, as we have seen, distinguishes between man’s natural appetite and man’s natural right: while natural appetite is the origin of all injustice, natural right is the origin of all justice. Such a distinction could

^a [LS note] *Elements*, Pt. I, ch. 16, sect. 2 and 4. Cf. *De cive*, cap. 3, art. 3 and 5, as well as *Leviathan*, ch. 14 (p. 68).

^b [LS note] Suarez, loc. cit., lib. I, cap. 2, §§1–2.

^c [LS note] As regards the skeptical tradition, I would refer the reader to Hobbes’s criticism of Carneades in *Leviathan*, ch. 15 (p. 74f.) and 46 (p. 365). Compare in this connection Grotius, *De jure belli*, Prolegg., §§5, 16 and 18.

^d [LS note] As regards in particular the teaching of the Sophists, we may recall Hobbes’s interpretation of the discussion between Athenians and Melians. This interpretation shows with all clarity the gulf which separates Hobbes’s thought from that of the Sophists. See p. 173, n. b, above.

not be accepted by the adherents of the Epicurean tradition, which derived all justice from covenants. For if all justice depends on covenants, then, as Epicurus himself expressly says, “nothing is *just or unjust*” before there are covenants made;^{a185} Hobbes, on the contrary,¹⁸⁶ teaches that before there are covenants made, nothing is *unjust*, i.e., every man has a *right* to everything. That, however, means¹⁸⁷ that there is a difference between right and wrong independently of all human legislation and covenants, that there is a *natural right*.¹⁸⁸

It may fairly be said that at least no well-known and influential thinker before Hobbes asserted the primacy of Right before Law.¹⁸⁹ Thus Hobbes marked an epoch in the history of political thought by this very fact that he was the first to teach that primacy. For the primacy of Right before Law, never heard of in earlier ages, became the characteristic feature of the most important political doctrines of the period after Hobbes.

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Spinoza bases his political doctrine on the *ius naturae*, in the sense of a justified, unblamable liberty or claim: *ius naturae*, as he understands it, is the right which men or other beings *have*.^b Spinoza goes even farther than Hobbes; he denies the very existence of a natural law in the sense of moral law.^c With this is connected the fact that, while Hobbes could distinguish between justice, as obedience to civil law, and equity, as obedience to natural law, Spinoza asserts that both justice and equity presuppose¹⁹¹ civil law.^d Pufendorf deals in his *Elementa Jurisprudentia Universalis*¹⁹² with *ius* as the right which men have, before he treats obligation and law.^{e193} Locke certainly does not derive natural law from natural right; he even affirms that natural law obliges in the state of nature to right actions. But in spite of his adhering so far to the traditional view, it is easy to see that in his teaching, too, natural law is put into the background in favor of natural right. To perceive this, we need only to follow the hint which he himself gives us: by quoting so emphatically the judicious Hooker, he, as it were, invites us to compare his

^a [LS note] *Ratae sententiae* XXXII (Diog. Laert., X, 150).

^b [LS note] *Tract. Theol.-pol.*, XVI, 3–4 and 40; *Tr. Pol.*, II, 3. Cf. *Eth.* IV, prop. 37, schol. 2 and app. c. 24.

^c [LS note] *Tract. Theol.-pol.*, XVI, 54.

^d [LS note] Cf. *Leviathan*, ch. 21 (p. 112) with *Tr. Theol.-pol.* XVI, 41–42.

^e [LS note] *Jus* is dealt with in *Def.* 8, *Obligatio* in *Def.* 12, and *Lex* in *Def.* 13. Compare also *De jure naturae et gentium*, lib. I, cap. 1, §§19–21.

doctrine with that of Hooker. Indeed, we have only to compare the context into which Locke in the second book of his *Two Treatises of Government* inserts his first quotation from Hooker with the context in which the passage quoted occurs in Hooker's work in order to realize that, as regards the fundamental principles, there is no possible continuity between Hooker and Locke. The passage by which Hooker intended to illustrate the natural law which concerns "our duty . . . towards man"^a is used by Locke to prove the equality of man by nature.^b The chapter in which the passage in question occurs in Hooker's work is one out of five chapters dealing with natural law, while in Locke's treatise there is no single chapter especially devoted to natural law: the chapter into which Locke inserted the quotation mentioned deals with the *state* of nature. It is true, Locke mentions already in the first section of that chapter the natural law; but he does this only, as it were, parenthetically. The purpose of the two first sections is rather to show that the state of nature is a state of perfect freedom and equality, i.e., to define the natural right. Only the following section is devoted to natural law. The seven subsequent sections, i.e., more than the half of the chapter, deal with the *rights* to punish the transgressors of natural law and to take reparation for damage.¹⁹⁴ The intention of the two concluding sections is to prove that there is or was a state of nature. The least one must infer¹⁹⁵ is that on the way from Hooker to Locke the interest has shifted from the law of nature to the state of nature.^c This, however, means a shifting of the interest from the law of nature to the right of nature; for the analysis of the state of nature has no other aim but to illustrate "all the *privileges* of the state of nature."^d *Montesquieu* then¹⁹⁶ asserts against Hobbes most emphatically the existence of laws of nature; but he understands by those laws no rule and measure, but sentiments and desires.^e Accordingly, he judges the laws of nature to be inferior in value to the positive laws: "(Les bêtes) ont des lois naturelles, parce qu'elles sont unies par le sentiment; elles n'ont point de lois positives, parce qu'elles ne sont point unies par la connaissance."^f Thus, natural law loses all

^a [LS note] *Ecclesiastical Polity*, Book I, ch. 8, §7.

^b [LS note] *Two Treatises of Government*, Book II, ch. 2, §5.

^c [LS note] "It is not the Law of Nature, but the State of Nature which is now (sc. since Rousseau) the primary subject of contemplation." Maine, *Ancient Law*, ed. C. K. Allen, p. 73.

^d [LS note] Locke, loc. cit., ch. 9, §127.

^e [LS note] *L'esprit des lois*, I, ch. 2.

^f [LS note] *Ibid.*, ch. 1.—The statement quoted recalls Ulpianus's famous distinction between *jus naturale* and *jus gentium*, according to which *jus naturale* is common to all animals, and *jus gentium* to all men. But Ulpianus's definition is based on the Stoic doctrine of the

its dignity. As regards *Rousseau* I need only quote the following sentences from a recent book on his political doctrine: "His argument starts from the traditional theory of natural man and natural rights, ideas to which he clings although he has abandoned the associated idea of natural law . . . The change that Rousseau . . . effects in the theory of Locke is not so much in his view of political society as in his theory of the state of nature, and this is itself the result of abandoning the idea of natural law . . ."^a

All the thinkers mentioned put natural law into the background in favor of natural right. But¹⁹⁷ we can understand the significance of this tendency which dominates seventeenth- and eighteenth-century political thought only by studying Hobbes's doctrine.^b For none of the others asserted with clarity with which Hobbes did the primacy of natural right before natural law. [Natural right, as Hobbes understands it, is primarily the right to defend life and limb. It is for satisfying the demands of that right that men unite themselves in political societies. For the necessary means for defending life and limb is peace and union against common enemies; and the end of the State is¹⁹⁸ nothing other than "Peace and Common Defence."^c In order to found the State, men must renounce their "originall Right"^d to everything and every action, which in the state of nature was justified as a necessary consequence of the right to defend life and limb. But they need not and they cannot renounce that fundamental right itself: "the right men have by Nature to protect themselves, when none else can protect them, can by no Covenant be relinquished."^e Men keep this right even against the sovereign power, and it cannot be forfeited by anything, not¹⁹⁹ even by any crime: "If the Sovereign command a man (*though justly condemned*) to kill, wound,

principia naturae which are common to all animals; i.e., *jus naturale*, as he understands it, in any case in the distinction mentioned, is meant to be merely the point of departure for arriving at the highest good which is appropriate to *human nature* (see Cicero, *De finibus*, III, 5, 16ff. and V, 9, 24ff.), and, consequently, for arriving at the natural law in the full and usual sense. As it seems to me, it is this natural law which is intended by Ulpianus when he speaks in the definition referred to of *jus gentium*. (Compare, however, the different interpretation given by Carlyle, loc. cit., pp. 39–44. Carlyle does not take into account the Stoic doctrine of the *principia naturae*.) We may then say that Montesquieu, by coordinating the law of nature to sentiment and the positive law to knowledge, replaces the law of nature in the traditional sense by positive law.

^a [LS note] A. Cobban, *Rousseau and the Modern State*, London 1934, p. 115.

^b This and the following sentence appeared initially in reverse order.

^c [LS note] *Leviathan*, ch. 17 (p. 90); cf. *De cive*, cap. 5, art. 9.

^d [LS note] *Leviathan*, ch. 14 [15?] (p. 67); cf. *De cive*, cap. 2, art. 4 (*jus primaevum*).

^e [LS note] *Leviathan*, ch. 21 (p. 116).

or mayme himselfe; or *not to resist those that assault him*; . . . yet hath that man the Liberty to disobey.” “. . . in case a great many men together, have already resisted the Sovereign Power unjustly, or committed some Capitall crime, for which every one of them expecteth death, whether have they not the Liberty then to joyn together, and assist, and defend one another? Certainly they have: For they but defend their lives which the Guilty man may as well do, as the Innocent.”^a If the meaning of the doctrine of the rights of man is that the State has no other purpose than safeguarding those rights, which are prior to the State, and that those rights, being inalienable, are the limits to any and every action of the State, we must rank Hobbes among the teachers of the rights of man. One cannot object that Hobbes, by acknowledging the right to defend life and limb only, denied the rights of man as they were understood in the eighteenth century. For Hobbes himself could not leave the matter at the single right to defend life and limb: “As it is necessary for all men that seek peace, to lay down certaine Rights of Nature; that is to say, not to have libertie to do all they list: so is it necessarie for mans life, to retaine some; as right to governe their owne bodies; enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well.”^b “. . . There be some Rights, which no man can be understood by any words, or other signes, to have abandoned, or transferred . . . the motive, and end for which this renouncing, and transferring of Right is introduced, is nothing else but the security of a mans person, in his life, and in the means of so preserving life, as not to be weary of it.”^c It would be an easy thing indeed to justify all rights of man in the most extravagant sense of the word by the natural right acknowledged by Hobbes, the right²⁰⁰ to “all things without which a man cannot live, or not live well,” at any rate, if one has replaced, as Hobbes had done, the traditional idea of *beatitudo* by the modern idea of progress, i.e., if the meaning of the claim to living well is practically limitless.

And it is even as easy, by starting from Hobbes’s assumptions, to raise the claim that the State ought to be a society founded on the natural rights of man, of equal and free men. That men are naturally equal and free was, indeed, a traditional view. But, according to tradition,²⁰¹ original equality and freedom had been forfeited by human fault or even by original²⁰² sin. Thus

^a [LS note] *Ibid.* (p. 114f.); cf. *De cive*, cap. 2, art. 18.

^b [LS note] *Leviathan*, ch. 15 (p. 80); cf. *De cive*, cap. 3, art. 14.

^c [LS note] *Leviathan*, ch. 14 (p. 68); cf. *ibid.* (pp. 71 and 72) and *De cive*, cap. 2, art. 19, as well as cap. 6, art. 13.

the traditional doctrine of natural²⁰³ equality and freedom was combined, at least in its origin, with a systematic refusal of all claims to equality and freedom in the actual society. For the claiming person was not supposed to be in that state of original innocence which was thought to be the condition for enjoying original equality and freedom.^a Equality and freedom could become the object of a claim, they could become an inalienable *right*—in other words, the traditional conception of natural equality and freedom could take on a revolutionary meaning—only under two conditions: firstly, if original equality and freedom was no longer judged to be bound up with original innocence, or, secondly, if the actual²⁰⁴ lack of equality and freedom was no longer looked upon as effected by the sin of all men in Adam and, consequently, as not to be removed by merely human efforts. Both conditions necessary for bringing about that fundamental change in the conception of natural equality and freedom have been fulfilled with singular clarity in Hobbes's political philosophy.

For Hobbes, far from asserting any connection between original equality and freedom on the one hand, original innocence on the other, teaches that original equality and freedom is the counterpart of original wickedness. He does this, of course, in order²⁰⁵ to prove that actual inequality and dominion is much to be preferred to original equality and freedom. But whatever may have been his intention, actually he made equality and freedom being, as it were, inherent qualities of man which were not conditioned by any other qualities (innocence,^b goodness, or spiritual life). Now, if men even in their original, wicked state, the state of nature, where *homo homini lupus est*, were equal and free, why should they not claim equality and freedom in their actual, at least much better state, the civil state, where²⁰⁶ *homo homini*

^a [LS note] It is very significant that the most powerful advocate of equality and freedom was able to say of himself: "Pour moi, je suis toujours demeuré le même; plus ardent qu'éclairé dans mes recherches, mais sincère en tout, même contre moi; *simple et bon*, mais sensible et faible: faisant souvent le mal, et toujours aimant le bien . . ." (Rousseau, Lettre à M. de Beaumont, shortly after the beginning). Rousseau could claim equality and freedom of the natural state because he had, or believed to have, the qualities of the man of that state. Compare, e.g., the following statement in the *Discours sur l'origine de l'inégalité parmi les hommes*: "L'homme sauvage n'a point cet admirable talent; et, faute de sagesse et de raison, on le voit toujours se livrer étourdimement au premier sentiment de l'humanité."

^b [LS note] See particularly *Leviathan*, ch. 21 (p. 115), quoted on p. 190 above [that is: "the right men have by Nature to protect themselves, when none else can protect them, can by no Covenant be relinquished"].

Deus est? Particularly if just the actual inequality and dominion were the reason, as it sometimes happens, for²⁰⁷ men becoming weary of life?

No less important is the fact that Hobbes by his doctrine of natural right paved the way for²⁰⁸ the belief that the people as such is morally better than the higher and governing class as such.²⁰⁹ According to him, natural right is the source of natural law and, therefore, of all virtues. This means that only those human qualities which are derived from natural right are truly virtues. Now, the root of natural right is fear of death, more exactly, fear of violent death. As a consequence, he must deny that courage is a virtue. The necessity to draw this conclusion was all the more urgent as he sees the root of all injustice in the will to triumph over all other men, in "pride," "glory," or "honour," as honor is related to war, and the virtue in war is courage. What has been said of Hobbes's opinion about courage holds also of his opinion about all other virtues which characterize the aristocracy, the military class, the court. The only virtues which he really esteems are those which can be derived from fear of violent death, i.e., those of the peaceful, law-abiding, industrious, and thrifty subject. We may say, he admits as virtues only those of the bourgeoisie as opposed to the pseudo-virtues of the aristocracy. By this fact, he opens up the way to the belief that the people as such is better than the court as such, i.e., to the belief to which the claim to equality and freedom owed its whole fire and passion. If the people as such is better than the governing class as such, then actual inequality and dominion have no moral justification at all; for then it is obvious to think that actual inequality and dominion have their origin not in the sin or the fault of all men, but rather in the malice of those who profit by the oppression of their fellow men, in the "pride" of the aristocrats: "*Dominantibus propria est superbia*."^a

It was, then, the new foundation, laid by Hobbes, of political philosophy which made possible the development of the doctrine of the rights of man in the seventeenth and eighteenth centuries, i.e., the development on which all later political thought, however hostile to the gospel of the French Revolution, is based. Therefore, if we want to understand the essence, the ultimate assumption underlying modern political thought in general, we have to study, in the first instance, the political philosophy of Hobbes.

As regards that ultimate assumption, I indicated already that the *conditio sine qua non* for the primacy of Right before Law is the denial of any super-

^a [LS note] Spinoza, *Tract. polit.* VII, 27.

human order or will. But this negative condition fails to explain fully why the conception of Right, as distinguished from Law, came more and more into the foreground. For there was a materialism in classical philosophy, a materialism which, no less than that of Hobbes, implied the denial of any superhuman order or will, and this classical materialism, as we have seen, did not lead to the conception of natural right. We have, therefore, to seek after the specific difference between premodern and modern materialism, or rather atheism, in order to grasp the ultimate reason of Hobbes's doctrine of the primacy of Right before Law.²¹⁰ That there is a fundamental difference between both is evident from the outset. As Burke has put it: "Boldness formerly was not the character of Atheists as such. They were even of a character nearly the reverse; they were formerly like the old Epicureans, rather an unenterprising race. But of late they are grown active, designing, turbulent, and seditious."^a Why then did atheism become "enterprising" and "designing"?

Premodern atheism was based on knowledge of the limits set to human designs: if man will be happy, he has to seek his happiness in himself, he has, to begin with, to make himself as independent as possible of external goods, of all goods the possession of which does not depend on his will alone. Out of this view, no interest in the²¹¹ conquest of nature and in the²¹² revolution of society could possibly arise. Things changed fundamentally when the possibility of such an interior happiness was no longer believed in, when the idea of *beatitudo* was rejected as being incompatible with human life, with its continuous movement and restlessness. Man was, then, no longer judged to dispose of the possibility of self-sufficiency, but to depend essentially, i.e., with regard to the very core of his happiness, on external conditions. While Epicurus could say almost in the same breath that because of death all men are living in an unwalled city, and that death does not concern us,^b Hobbes's very starting point is that death is the greatest and supreme evil, not counterbalanced by a supreme good. This, however, means that the essential conditions on which happiness rests are not only external, independent of man's will, but even contrary, hostile to it: nature made men not only dependent, with regard to the essence of happiness, on each other, it did even "dissociate"^c them, make them the enemies of each other. That is to

^a [LS note] *Thoughts on French Affairs*, loc. cit., p. 314.

^b [LS note] *Gnomolog. Vatican.*, 2 and 31.

^c [LS note] *Leviathan*, ch. 13 (p. 65).

say that man does no longer feel helped by nature, but menaced by it: he is frightened by both “le silence éternel de ces espaces infinis”^a and his fellow men which naturally are nothing better than his potential murderers. Nature is, however, felt as a menace not because man has now discovered natural evils either in the world or in himself which were unknown to classical philosophy, but because man had been accustomed by a tradition of almost two thousand years to believe himself or to be²¹³ protected by Providence. When this belief became shattered, he could not immediately cease to hope for Providence, to expect help from it. Denial of Providence was thus from now on related not²¹⁴ to serene and detached philosophizing, but rather to disappointed hope²¹⁵ in Providence. What was in earlier times nothing more than the complaint of suffering, not yet enlightened Job became now, as it were, the keystone of philosophy. No classical philosopher could have said what Voltaire put into verses on the occasion of the earthquake of Lisbon:

Croyez-moi, quand la terre entr’ouvre ses abîmes,
Ma plainte est innocente et mes cris légitimes.

...

Je respecte mon Dieu, mais j’aime l’univers.
Quand l’homme ose gémir d’un fléau si terrible
Il n’est point orgueilleux, hélas, il est sensible.^b

When reading these verses, we understand best the fundamental change in political thought which lies at the root of the modern doctrine of the rights of man. In the seventeenth and eighteenth centuries, men—whether they were as yet deists or already outspoken atheists, is not important—believing themselves justified by their *sufferings*,^c began to raise claims not only, and not in the first instance, against their crowned or uncrowned fellow men, but against Providence. Being as yet under the spell of the traditional idea of Providence, they felt the menace to their happiness, this menace which was and is always felt, much stronger than classical philosophers could do; but no longer believing in the existence of Providence, they were

^a [LS note] Pascal, *Pensées*, Brunschvicg, fr. 206.

^b From “Poème sur le désastre de Lisbonne, ou examen de cet axiome: ‘tout est bien’” (1756).

^c [LS note] In this they were following the lead which Hobbes had given by justifying natural right by the fear of the greatest and supreme evil. Compare, besides, Locke, *Essay on Human Understanding*, Book II, ch. 20, §6.

enabled by this very unbelief to fight that menace. Their denial of Providence was not merely a theoretical assertion but a practical revolt against Providence. Fighting the superhuman, inhuman menace to human happiness, however, meant conquering nature, i.e., both boundlessly producing external goods and revolutionizing society. It was in this way that atheism became “enterprising,” that the principles leading to the French Revolution came into being.²¹⁶

Notes

38. “The question of” was replaced by “The fact that we are seeking for.” (Only the more significant corrections by Strauss have been noted.)

39. “is far from being clear in itself” was replaced by “needs some explanation and even justification.”

40. “it is our primary” was inserted, replacing “we have this.”

41. “to understand the essence of modern political thought” was inserted by hand.

42. Strauss had handwritten “complete” over “perfect” but then crossed it out.

43. “As” was crossed out by hand before “True,” capitalized by hand.

44. “we cannot understand” was replaced by “it would be a waste of time to ask.”

45. “call” was crossed out.

46. “into” was in part crossed out by hand.

47. The remainder of the paragraph was crossed out; however, the following paragraph continues discussing Carlyle’s statement so we have kept the passage.

48. “of Dr Carlyle” was inserted by hand.

49. “as yet” was added by Strauss.

50. “believed” had been replaced by “endeavored” which in turn was replaced by “attempted.”

51. “By this fact” was crossed out and replaced by hand with “In doing so.”

52. “was reached” was replaced by “had been attained.”

53. “firmity” was replaced by “strength and firmness.”

54. “that” was inserted by hand.

55. “and Hobbes” was added.

56. A page numbered 3a had been inserted with alternative phrasing, replacing the text underlined and then crossed out by pen. The text crossed out reads: “based on general principles”; that as a consequence of their wrong method, all earlier thinkers, Grotius and Althusius included, were unable to reach a true, scientific knowledge of the rights of man; that the true philosophical method—the exact analysis of our ideas and sentiments—has been found only by Locke; that Locke and Rousseau are the most important teachers of the rights of man; that they were the first to deduce the natural rights.”

57. “that” was inserted by hand

58. “a” before “perfect harmony” was crossed out by hand.

59. Following the colon, “The present revolution” was crossed out.

60. Strauss crossed out and omitted Burke’s “Whatever the government might be, with respect to these persons and these forms, the stationary interests of the nation concerned have most commonly influenced the new governments in the same manner in which they influenced the old; and”

61. Note written by hand: “No paragraph!”

62. “any” before “competent” was crossed out.

63. “too” was replaced by “so.”

64. “too” was replaced by “so.”

65. “that is to say, a definitely modern conception” was crossed out.

66. “most influential” was added.

67. “as far” was inserted by hand above the line.

68. “in the last decades” was replaced by “from the middle.”

69. “ever” was typed above the line and followed by hand with “had been.”

70. “the oblivion of” was replaced by “people having forgotten.”

71. “made” was replaced by “undergone.”

72. “made” was replaced by “undergone.”

73. “*in statu militant[d?]i*” was replaced by “as long as it had to struggle against the old values.”

74. “the most learned” was added.

75. “very” was added.

76. “keep too strictly to Condorcet’s words” was replaced by “follow Condorcet too strictly.”

77. “thinker” was x’ed out and “theorist” typed above the line.

78. “I shall speak of it later. Now I shall stress only one point. There is” was replaced by “The fact that this break is overlooked is due to.”

79. “the writings of” was added.

80. "sense" was replaced by "direction."
81. "genial" was replaced by "original."
82. The portion of the sentence after the colon was added by hand in the margin.
83. "indeed" was inserted by hand and the same word crossed out by hand after "thinker."
84. "as regards" was inserted by hand.
85. "with materials borrowed from tradition" was replaced by "which was in the greatest possible harmony with traditional ideals."
86. "said" was replaced by "indicated" typed above the line. The square brackets were inserted by hand.
87. "modern political thought," abbreviated, replaced "it."
88. "in order that" by hand replaced "lest."
89. "perception" was replaced by "understanding."
90. "point" was replaced by "question."
91. "primarily, i.e., for the present occasion" was replaced by "today [to-day]."
92. "only" was added.
93. "in question" was replaced by "mentioned."
94. This sentence, however, was crossed out. Also crossed out was the sentence preceding this one: "By most radical thinker I understand that man who, being a deep and at the same time influential thinker, effected the break with tradition in its entirety in the most visible, the most profound and the most ample way." Also crossed out was a handwritten version of that same statement: that man who "had the clearest intention and the clearest consciousness that he gave an essentially new foundation to political [science], and who, therefore, expressed most precisely the opinion that traditional political science was fundamentally wrong." Finally, also crossed out was yet a third formulation: "being a reasonable and sincere person, intended with the greatest energy to give an essentially new foundation to political science, who had at the same time the clearest consciousness that he did give it such a foundation."
95. The passage from "From this point of view" up to and including "political precepts which" was crossed out in red, but the continuation of the passage requires the crossed-out passage.
96. "perhaps" was crossed out.
97. "however" was added by hand.
98. "deep" was replaced by "dense" by hand.
99. "scarcely," was replaced by hand by "not much" with "more" crossed out.
100. "none" replaced "nobody" which was crossed out.
101. "programmatic" was replaced by "general and introductory."
102. "dense" was inserted by hand.
103. "programmatic" was replaced by "general."
104. "preparing" was crossed out by hand after "were" and "preparing the ground" added after "one way."
105. "undergone" was replaced by "come under."
106. "any" was inserted by hand.

107. We have deleted the article “a” before “great weight” to be consistent with its deletion by Strauss in other passages.

108. “From this point of view,” typed above the line, replaced “Thus,” crossed out.

109. “programmatic” was replaced by “general.”

110. “Duns Scotus” was replaced by “Occam.”

111. “Or Cicero” was deleted.

112. An alternative text was crossed out by hand, from “we must make” to “modern political philosophy as such.”

113. In the crossed-out passage Strauss speaks of “one” preliminary observation and does not list what became observation “1).”

114. Strauss replaced “out of” by “from.”

115. “according to Hobbes” was inserted.

116. “fautors” was replaced by “promoters.”

117. “himself” was crossed out.

118. “fruit of the” was added.

119. “as” in pencil replaced “like.”

120. “bases” was corrected by hand.

121. The paragraph that follows was crossed out in red pencil, perhaps, as in cases above, an indication that the passage should be skipped during delivery but not struck from the lecture itself.

122. Strauss crossed out with a red pencil the passage beginning “I cannot now produce the proofs” up to and including the sentence further in the same paragraph that ends with “will of the sovereign power.”

123. “for” was replaced in pencil by “of.”

124. The rest of this paragraph was added.

125. “repeated” was replaced by “emphatic.”

126. Strauss had mistakenly written “right” instead of “law.” The passage from “At first glance” to the end of the paragraph was handwritten in the margin.

127. The portion of the paragraph up to this point was crossed out in red pencil, perhaps to indicate that it should be skipped during delivery, perhaps to underscore it.

128. “became conscious of his” was x’ed out and replaced by “understood his own.”

129. “the conceptions of law and” was x’ed out and replaced by “his own doctrine of absolute

130. We have corrected “unexact” to inexact in the text in all instances.

131. “, to the will of the sovereign,” was added by hand.

132. “On the other hand” was replaced by “Generally speaking.”

133. The passage beginning “before there is a commonwealth” up to and including the first sentence of the next paragraph was crossed out (or underlined) in red pencil.

134. “but” was replaced by “than,” by hand.

135. “the difficulty” was added by hand.

136. “to the earthly governors” was added.

137. “the” was crossed out before “natural law.”

138. “result” was replaced by “impression.”

139. The passage beginning “Independently of *civil* legislation” and ending with the sentence “Thus, according to him, natural law is in no sense a *law*” was crossed out in pencil.

140. “the” before natural was crossed out by hand.

141. “opinion” was x’ed out and replaced by “statement.”

142. The point made in this sentence was marked as “1” in pencil.

143. The point made in this sentence was marked as “2” in pencil. The rest of this paragraph was crossed out in red pencil.

144. “expressly” was added by hand.

145. “whole tradition and particularly against” was inserted by hand.

146. Strauss replaced “In the classical conception,” with “In the conception of classical philosophy.”

147. “which is” before “guiding” was crossed out.

148. “the danger” was added by Strauss.

149. “precepts” was x’ed out and replaced by “principles” above the line.

150. Strauss replaced “cannot be solved but by going back to the real” with “compels us to go back from the theory of natural law [to the].”

151. The two sentences that follow were crossed out in pencil.

152. “flies” was replaced by “flees.”

153. “obliges” was crossed out.

154. “However” was added over a “but,” which was not crossed out.

155. The following paragraph was crossed out in red pencil.

156. “which justifies natural right” was added in the margin by hand.

157. The rest of this paragraph was added by hand.

158. “The consequence then is:” was added by hand above the line.

159. “at least” was added by hand.

160. “in one sense certain, in another sense uncertain” was replaced by “at least in one sense uncertain.”

161. “to say the least” was replaced by “definitely” (the word “certainly” was written in pencil and then put in square brackets).

162. We have corrected “not” to “no.”

163. “And as he says” [?] was added.

164. “further” was added.

165. Here, near the bottom of p. 27 of the original typescript, there is a note in pencil saying, “*Folgt*: 30,” perhaps indicating that Strauss intended to skip (in his delivery) to p. 30 of the typescript, which begins with “But these earlier writers did not distinguish.” The following three sentences were crossed out in red pencil.

166. “mostly” was replaced by hand by “generally” by hand.

167. “prepared” was replaced, though seemingly not in Strauss’s handwriting, by “led up to or suggested.”

168. “as derived from justice and as being ‘all that is equitable and good’” was added by hand.

169. “But these” was added. We have lowercased “Earlier” accordingly.

170. “And they did not” was added and made the beginning of a new sentence.

171. "and" was inserted by hand.
172. "as" before "not" was crossed out.
173. "answered for" had been replaced by "justified" but was then restored.
174. "answered for" had been replaced by "justified" but was then restored.
175. "power" was replaced by "will."
176. An alternative ordering of this sentence was indicated by penciled arrows: "But he succeeds in this merely because he was able to discover a medium between transcendent law and natural appetite: namely, natural right (the minimum claim)."
177. The paragraph that follows was crossed out in red pencil.
178. "for the latter derivations imply in any case that" was replaced by "for according to the latter explanations."
179. "Hobbes's derivation implies that the ultimate reason of" was replaced by "according to Hobbes's explanation."
180. "derived from" was added.
181. "Thus" was inserted by hand.
182. "or" was crossed out and replaced by typed "and."
183. After "As regards the materialistic tradition," Strauss inserted by hand "it was never sufficiently interested in political and legal problems" and crossed out in red pencil the discussion of Epicureanism that follows here. Contrary to the rule we followed in the book, precedence has been given to the typed text and not to Strauss's corrections of it, since we are not sure of the meaning of the sections crossed out in red pencil.
184. "of" written by hand replaced "with regard to."
185. Alternative version corrected by penciled arrows: "as Epicurus himself expressly says, if there are no covenants made, 'nothing is *just or unjust*.'"
186. "other hand" was x'ed out and "contrary" typed above the line.
187. "that there is a difference between everybody's right and everybody's appetite and thus" was crossed out.
188. "that there is a natural right" was inserted by hand, with a note: "[paragraph!]."
189. This sentence was crossed out or underlined in red pencil.
190. Before the paragraph starting "*Spinoza*," in the area where we have inserted asterisks, there are some barely legible words, including "First" and "Only Locke."
191. "presuppose" was typed over "are related" that was crossed out.
192. "*Elementa Jurisprudentia Universalis*" was added and underlined.
193. "and law" was added.
194. "for damage" was added by hand in the margin.
195. "say" was crossed out and "infer" inserted by hand.
196. "then" was added by Strauss.
197. "But" was inserted by hand to mark the beginning of the sentence.
198. A repeated "is" was crossed out by hand.
199. "not" was added by hand.
200. "the right" was inserted by hand.
201. "the" before "tradition" was crossed out.
202. "the" before "original" was crossed out.
203. "original" was x'ed and "natural" typed above the line.

- 204. "present" was x'ed and "actual" typed above the line.
- 205. "the intention" was replaced by "order."
- 206. "when" was handwritten above "where."
- 207. "for" by hand replaced "that."
- 208. "for" by hand replaced "to."
- 209. Following the period, "He did this by his" was x'ed out.
- 210. The first four sentences of this paragraph were crossed out in red pencil (possibly because Strauss may have intended to omit them from his oral delivery), but since the rest of the section depends on the setup of these sentences, they have been retained.
- 211. "the" was inserted by hand.
- 212. "the" was inserted by hand.
- 213. "or to be" by hand replaced "being."
- 214. "not" was inserted by hand.
- 215. "disappointed hope" by hand replaced "deceived belief."
- 216. The final sentence was added by hand.